Supreme Court, U.S.
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No. 93-446

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

HPY, INC.,
Petitioner,

v.

ELECTRIC POWER AUTHORITY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF IN OPPOSITION FOR RESPONDENT PUERTO RICO AQUEDUCT AND SEWER AUTHORITY

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LIST OF PARTIES AND STATEMENT OF CORPORATE AFFILIATIONS

Respondent Puerto Rico Aqueduct and Sewer Authority (hereinafter, "PRASA") incorporates herein the List of Parties included at p. iii of the Petition for a Writ of Certiorari.

PRASA is a public corporation and an autonomous government instrumentality of the Commonwealth of Puerto Rico, created by Act No. 40 of May 1, 1945, as amended [22 Laws of Puerto Rico Annotated, § 141 *et seq.*].

PRASA has no parent or affiliate corporations or companies.

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BRIEF IN OPPOSITION FOR RESPONDENT PUERTO RICO AQUEDUCT AND SEWER AUTHORITY

Respondent Puerto Rico Aqueduct and Sewer Authority (hereinafter, "PRASA") respectfully opposes the Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit to review the judgment entered on April 13, 1993 and the order denying a rehearing entered on May 11, 1993 (hereinafter, "the Petition").

STATEMENT OF THE CASE

Respondent PRASA is a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, whose purpose is to provide water and wastewater sewage services to the people of Puerto Rico. *See*, 22 L.P.R.A. § 141 *et seq.* On April 16, 1992, Petitioner HPY, Inc. (hereinafter "HPY" or "Petitioner") filed a complaint (hereinafter "the Complaint") in the United

States District Court for the District of Puerto Rico ("the District Court") seeking recovery of at least $60,000,000 in compensatory and punitive damages from PRASA and other defendants. As respects PRASA, the only discernible allegations of the Complaint are:

> (a) that PRASA, "acting under color of state law engaged in unlawful, illegal, discriminatory and abusive acts, which . . . deprived [petitioner] of their [sic] property without substantive and procedural due process of law, by ignoring its own rules and regulations and the law that created it." Complaint par. 5. Pet. App. A23-A24.
>
> (b) that "on or about 1985, squatters, without valid title or authorization from the Plaintiff started massive land invasions on [petitioner's] properties. The squatters, also Defendants of [sic] this suit, encouraged and abetted by the other Defendants, proceeded to construct or build shacks and houses on Plaintiff's properties." Complaint, par. 8, Pet. App. A32.

On July 10, 1992, PRASA filed a motion to dismiss, alleging, *inter alia*, that the Complaint failed to state a claim against PRASA. Other codefendants filed similar motions and HPY filed several oppositions thereto. HPY, rather than request leave of court to file an amended complaint, argued in its oppositions to the motions to dismiss that the allegations in the Complaint were sufficient to state a claim. As respects PRASA, HPY alleged that the aiding and abetting consisted in the supply of water services to the squatters.

On October 6, 1992, the District Court entered an Opinion and Order dismissing the Complaint for failure to satisfy the notice pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure at its most basic level. The District Court assumed that PRASA's conduct alleged in the complaint was the supply of water services to the squatters, as amplified by HPY in its oppositions to the motions to dismiss. *See* Pet. 12; Pet. App. A14.

On January 18, 1993, HPY appealed the District Court's judgment to the Court of Appeals for the First Circuit. The appeal basically raised a single point, to wit: that the District Court abused its discretion in dismissing the Complaint with prejudice, without opportunity to amend and in disregard of the averments in petitioner's oppositions to the several motions to dismiss and other documents in the record.

PRASA argued on appeal, *first*, that the Complaint, even if aided by HPY's other filings before the District Court, was devoid of facts upon which to base a claim as respects PRASA; *second*, that the question of whether it might have been an error for the District Court to have denied leave to amend was not properly before the Court of Appeals because HPY never requested such leave; and *third*, that even if the Complaint could somehow be construed as an invasion of HPY's land by PRASA, it was insufficient to state a cognizable claim under 42 U.S.C. § 1983 in view of the fact that state remedies were available, citing the holdings in *Williamson Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172 (1985), *Culebras Enterprises Corp.* v. *Rivera Ríos*, 813 F.2d 506 (1st Cir. 1987), and *Ochoa Realty Corp.* v. *Faría*, 815 F.2d 812 (1st Cir. 1987), to that effect.

On April 15, 1993, the United States Court of Appeals for the First Circuit, in an unpublished decision, affirmed the District Court's judgment dismissing the Complaint for failure to state a claim. The First Circuit held that the Complaint, even if aided by Petitioner's subsequent filings, and allowing HPY the benefit of liberal pleading rules, failed to state a claim. Pet. App. A6. The Court of Appeals found that the availability of remedies in the Commonwealth Courts defeated HPY's due process and taking claims, noting that HPY had not filed a reply brief to counter PRASA's assertions of such availability. Pet. App. A5-A6.

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to decide the applicability to this case of the recent decision in *Leatherman* v. *Tarrant County etc.*, 501 U.S. ——, 113 S. Ct. 1160, where this Court held that complaints under 42 U.S.C. § 1983 were subject to the notice pleading standard of Federal Rule of Civil Procedure 8(a). But even aside from the fact-specific nature of this request, there is no issue under *Leatherman* here. Simply, neither of the courts below departed from the standard of pleading mandated in *Leatherman* when they dismissed the Complaint.

The District Court's Opinion and Order found that the Complaint failed to satisfy the pleading standards of Rule 8(a) of the Federal Rules of Civil Procedure at the most basic level. Pet. App. A14. The Court of Appeals affirmed the District Court's holding as to noncompliance with Rule 8(a) of the Federal Rules of Civil Procedure without relying on any heightened pleading standard. Pet. App. A4-A5. In upholding the District Court's decision to dismiss with prejudice, the Court of Appeals noted (Pet. App. A6):

> HPY filed an utterly uninformative complaint. We have effectively treated the additional material scattered in its three oppositions filed in the district court as amendments to the complaint. Even so, HPY has still failed to state a claim . . . . Accordingly, we do not think that the dismissal with prejudice represents an abuse of discretion.

HPY also disputes the availability of remedies for the alleged misconduct before the Commonwealth Courts. But this dispute plainly presents no issue for this Court's review. And, in any event, the additional submissions of facts made by HPY before this Court, even assuming their truth, only serve to reinforce the Court of Appeals' assumption as to the availability of remedies in the Commonwealth Courts.

Petitioner's Appendix shows, among other relevant facts, the following:

(1) After squatters allegedly invaded HPY's property in 1985, HPY filed an action in the Superior Court of Puerto Rico to evict the squatters. The case was merged with other similar actions filed by owners of surrounding properties, Cases Nos. CS85-1429, CS86-2817 *inter alia* (collectively referred to hereinafter as "the eviction action").[1]

(2) Two years later HPY sued the Commonwealth of Puerto Rico in an inverse condemnation action, Case No. 87-6584 (hereinafter, "the inverse condemnation action"), alleging that, because the Police and the Justice Department of Puerto Rico had failed to prosecute the squatters in a criminal action filed by HPY and because the government of Puerto Rico was proceeding with urbanization on the property, the Commonwealth should pay compensation for the alleged taking. Pet. App. A38-A47.

(3) On October 10, 1988, the Commonwealth of Puerto Rico filed a condemnation claim in the Superior Court of Puerto Rico, Case No. 88-0418 (hereinafter, "the condemnation action"). This action seeks to condemn the land neighboring HPY's property, which was also invaded by squatters. Pet. 9.

(4) HPY apprised the Court in the inverse condemnation action that its property might have been included in the condemnation action, Pet. App. A48-A50; and on June 6, 1989, HPY requested dismissal of the inverse condemnation action. The grounds asserted by HPY for such dismissal were:

> *Our surveyors have verified that the encumbered area affected that is the subject of the present litigation is within the condemned property* for which we request

[1] The complaint in the eviction case is not in the record. Some documents pertaining to the eviction action appear in Petitioner's Appendix at A66-A108.

> the dismissal of the present case without prejudice. Pet. App. A51-A52 (emphasis added).

(5) On April 20, 1990, the Court granted the requested dismissal, *with* prejudice. Pet. App. A53-A54. There is no indication in the record as to whether HPY ever sought reconsideration, relief, or *nunc pro tunc* amendment from this arguably clerical error in the judgment, to amend the dismissal to one *without* prejudice.

(6) In a hearing held on November 28, 1990, to entertain HPY's request to intervene in the condemnation action, HPY agreed that its invaded property was not being developed by the public agencies. According to the minutes of the hearing, where HPY was duly represented by counsel,

> the parties had the opportunity to look at some blueprints and some explanations *making it clear that the condemned lot borders the HPY Corporation Development* . . . . Once this situation had been resolved, the Court decided that the intervention was not in order, since the State has no interest in acquiring properties from that Corporation, *since it has its property outside the limits of the condemned area.* As there were no problems, therefore, its intervention is not justified because there is no interest. Pet. App. A60 (emphasis added).

The record does not show if HPY sought an amendment to these minutes. Assuming that the minutes are correct, there is no indication as to why HPY, after having allegedly verified the boundaries of the land by its own surveyors and obtained a voluntary dismissal in the inverse condemnation proceeding, could agree to the apparently opposite conclusion in the condemnation proceeding, which in turn laid the foundation for a denial of intervention. Neither is there any indication as to whether HPY sought reconsideration or relief from the order, or whether HPY timely filed a tort action against any defendant in this lawsuit based on the general tort

statute of Puerto Rico, Article 1802 of the Civil Code of Puerto Rico [31 L.P.R.A. § 5141].

What the record does show is that, out of the three proceedings initiated before the Commonwealth Courts, there was only one proceeding (the eviction action) in which HPY made any effort to request reconsideration, relief, or reopening of the case, and the request to reopen was granted. Pet. App. A69. In fact, HPY obtained a judgment in its favor in the eviction action on June 4, 1991, ordering that HPY recover full and undisturbed possession of the land (Pet. App. A105-A107) and holding that construction undertaken in the invaded land owned by HPY is in bad faith (Pet. App. A94-A95). Under Puerto Rico law, the holding as to bad faith means that any person or entity which has built improvements on HPY's land will lose to HPY whatever has been built, without right to compensation. Article 298 of the Puerto Rico Civil Code provides:

> He who builds, plants or sows in bad faith on another's land, loses what he has built, planted or sown, without having any right to indemnity. [31 L.P.R.A. § 1165].

A further consequence of the adjudication of bad faith is that HPY can demand that the improvements be removed and the property be placed in its condition prior to the occupation. Article 299 of the Puerto Rico Civil Code provides:

> The owner of the land on which any one has built, planted or sown in bad faith, may exact the demolition of the work or the removal of the planting or sowing and the replacing of everything in its former condition, at the expense of the person who built, planted or sowed. [31 L.P.R.A. § 1166].

The record is not clear as to whether HPY has made any meaningful effort to execute the judgment it obtained.

In short, the Commonwealth forum has afforded HPY ample opportunity to seek remedies for the wrongdoings

alleged in this case. If HPY was not diligent in pursuing such remedies, it is not for lack of opportunity.[2] And HPY's case as respects PRASA in particular stands on even hollower ground. As apparent from the Petition, HPY has never undertaken any effort to seek any remedies against PRASA in the Commonwealth Courts before involving it in this lawsuit.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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October 13, 1993

[2] Although the Petition elaborates the idea of a potential *res judicata* effect on a prospective inverse condemnation action as to HPY's land, it has made no showing that such an action has in fact been filed, let alone dismissed on *res judicata* grounds.